

1102. f. 6
31

3

OBSERVATIONS

ON

THE SITUATION

OF

HIS ROYAL HIGHNESS

THE PRINCE OF WALES.

BY JOHN NICHOLLS, ESQ.

SECOND EDITION, WITH ADDITIONS.

LONDON.

Printed for W. MILLER, Old Bond-street, and V. GRIFFITHS
No. 169, Strand.

1795.

PRICE ONE SHILLING.



OBSERVATIONS, &c.

THE payment of the Prince of Wales's debts engages the attention of the public. The idea that they are to be discharged by the nation is offensive. If there exists any where a fund, the property of the Prince, and which he is entitled to call for, justice requires that his claim should be brought forward, and if on examination the Prince's claim is well-founded, the money ought to be paid him, that he may relieve himself with his own property, and not with the bounty of others.—I am of opinion that such a fund does exist; and I believe that those who will consider the matter coolly and dispassionately, will concur with me in this opinion.

The Prince on his birth became proprietor in Fee-simple of the Duchy of Cornwall, by virtue of a settlement made of that duchy by act of Parliament in the 11th of Ed. III.—The estate created by that act was a Fee-simple Qualified, in many respects of a very peculiar nature; differing indeed so much from the rules of the common law, that nothing short of the power of Parliament could have created it.—For, 1st, it is an estate which may descend from the ancestor to the heir before the death of the ancestor, contrary to that general rule, *Nemo est hæres viventis*. 2dly, It is a Fee-simple which may *determine* for want of heirs, and *revive* whenever a person comes *in esse*, entitled to claim as heir within the description of the settlement; in this likewise it differs from estates at the common law.—There are other circumstances of peculiarity, which it is not necessary to remark.

The Prince of Wales on his birth became owner of this Fee-simple Qualified; but it did not descend to him from his father: for the Fee-simple Qualified created by the act of the 11th of Ed. III. was in abeyance, previous to the birth of the Prince of Wales; *id est,*

est, it existed only in contemplation of law.

—His present Majesty never was owner of this Fee-simple, for, not being the first-born son of a King of England, he was not heir to that estate within the description of the settlement.

During the life of George II. his present Majesty held the Duchy of Cornwall by virtue of a grant from his grandfather, and on the death of George II. he was remitted to the old estate in Fee-simple which existed in Edward III. previous to the settlement made in the 11th of that monarch's reign. This old Fee-simple, which was in his present Majesty previous to the birth of the Prince of Wales, *vanished* on the birth of the Prince of Wales; the Prince taking by descent, as heir of the Fee-simple qualified, created by the 11th of Ed. III.

The Prince being owner of the Duchy of Cornwall from the moment of his birth, the presumption of law is, that he was entitled to the revenues from the same period; they have been received by the King during the Prince's minority; but, except the King can shew a right to retain them, they have been received for the use of the Prince. A case

has been cited by Mr. Anstruther, as an answer to the Prince's claim of these revenues during his minority; viz. the claim of Charles I. while Prince of Wales; on which claim, it is said, the judges were of opinion that Prince Charles was not entitled.

I do not know whether this opinion of the judges is in print; I have not been able to meet with it. But the title of Prince Charles was widely different from that of the present Prince of Wales. For, 1st, Prince Charles did not take the Duchy of Cornwall as heir of the Fee-simple Qualified, created by the 11th of Ed. III. Prince Charles not being the first-born son of a King of England, so as to enable him to take as heir, within the terms of that settlement. He took as a purchaser, under a grant from his father King James; taking as a purchaser, and by virtue of a grant from his father, Prince Charles had no pretence to demand the revenues antecedent to the date of his grant. That Prince Charles did not take the Duchy of Cornwall as heir under the settlement of the 11th of Ed. III. is proved by the doctrine laid down in *The Prince's Case*, in Lord Coke's 8th Report; for it is there laid down, that

that, Henry VIII. did not succeed to the Duchy of Cornwall, as heir under this settlement, because he was not the first-born son of a King of England; his brother Prince Arthur having been the first-born son. Now if this doctrine was well founded as to Henry VIII. it applied equally to the claim of Prince Charles, his brother Prince Henry having been the first-born son of King James.

I am aware that there is a dictum of Lord Hardwicke, in a case reported by Vezey, in which his lordship is stated to have entertained doubts of the soundness of the doctrine laid down by Lord Coke, in his report of *The Prince's Case*. Lord Hardwicke's opinion (admitting it to have been correctly stated by Mr. Vezey) was a mere *dictum*, thrown out *obiter*, and extrajudicially; and is acknowledged to have been founded on a loose expression of Lord Bacon, viz. that on the death of Prince Henry, the Duchy of Cornwall *devolved* on Prince Charles. Now, in the first place, it is to be observed, that this expression is used by Lord Bacon, not as lawyer, but as an historian; and it is hazarding a great deal to say, that Lord Bacon

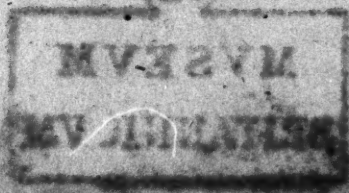
con meant by this expression, that Prince Charles took by descent, and not by purchase. *The Prince's Case* was a most solemn decision, in the Court of Chancery, by Lord Chancellor Ellesmere, assisted by Sir John Popham, Sir Edward Coke, Fleming, Chief Baron, and Williams, Judge of the King's-Bench; the object of the discussion was to ascertain the rights of Prince Henry as Duke of Cornwall. And all the various incidents of that Qualified Fee-simple which was created by the 11th of Ed. III. were examined in the course of the discussion.

Lord Ellesmere, Sir John Popham, and Sir Edward Coke, are names of the first estimation among the sages of the law; and we have the advantage of having the case reported by Sir Edward Coke, at that time Chief Justice of the Common Pleas, and who himself assisted at the judgment. From the consideration of these circumstances, I cannot say that this dictum of Lord Hardwicke at all weighs with me, when opposed to the solemn decision reported by Lord Coke. *The Prince's Case* was decided in the 3d of James I. and when Prince Charles's claim was examined by the judges, I cannot help

help thinking that they must have guided themselves by that solemn decision so lately pronounced, and which they had at that time in print reported by Lord Coke. If they did guide themselves by the doctrine laid down in *The Prince's Case*, there was an end of Prince Charles's claim; for as he did not take as heir, but as a purchaser under his father's grant, there was no colour for his claiming the revenues antecedent to the date of his grant.

But admitting for the moment, that the judges who decided on Prince Charles's claim did not adopt the doctrine laid down in *The Prince's Case*, yet, notwithstanding this, there was another ground on which they were obliged to decide against Prince Charles's claim. If Prince Charles took as heir, King James, as Guardian in Chivalry, was entitled to receive to his own use the revenues of the Duchy during the minority of the Prince. So that, *Quæcunque Viâ*, whether Prince Charles took as a purchaser under a grant from his father, or as heir of the Fee-simple created by the settlement in the 11th of Ed. III. he was not entitled to the revenues during his minority.

This



This rejected claim therefore of Prince Charles must be laid out of the question ; and can in no degree influence our opinions, respecting the right of the present Prince of Wales ; except his Royal Highness can be shewn to stand in one of the two situations in which Prince Charles must have stood ; viz. either as a purchaser claiming by grant from his father, or as an heir, liable during his minority to the rights of a Guardian in Chivalry. And, if the language of his Majesty's Attorney General has been correctly stated in the News-papers, this is the ground on which his Majesty's right to retain the revenues during the Prince's minority seems to be rested : viz. that the statute of the 12th of Car. II. c. 24, does not extend to that estate in Fee-simple, which was created by the 11th of Ed. III. and that consequently the King, as Guardian in Chivalry, was entitled to the revenues of the Duchy during the minority of the Prince.

If the statute of the 12th of Car. II. did not extend to this estate, as well as to all other estates of inheritance within this realm, then I admit that the King had a right to the revenues during the Prince's minority ; but I maintain,



maintain, that the statute of the 12th of Car. II. did extend to this estate, and I challenge the Attorney-General to advance any solid Reasons in support of a contrary opinion.

Not having been present when the Attorney-General is supposed to have advanced this doctrine, I do not exactly know on what grounds he rested his opinion. The news-papers suppose him to have taken a distinction between a military tenure and a peerage tenure; to have stated that the Prince's estate in the Duchy of Cornwall was a peerage tenure, and to have asserted that the statute did not abolish Guardianship in Chivalry in the case of a peerage tenure. I am not certain that there is such a distinction of *military tenure* and *peerage tenure*; but if there is, I maintain that the statute has abolished *the fruits and consequents* of tenure in every instance; and that no case can *now* exist in which the King, as Guardian in Chivalry, is entitled to take to his own use the revenues of any man's estate during his minority.

The expressions in the statute respecting peerage honours will all be found to have

C

been

been introduced for the protection and safeguard of those honours, and not for the purpose of keeping peerage honours subject to the burthenfome fruits of tenure. The whole purview of that statute is the abolition of the burthenfome fruits of tenure, which the statute recites to have been more burthenfome to the subject than beneficial to the King. Can the Attorney-General shew that there is any other estate in England over which the right of Guardian in Chivalry remains? It will be a singular circumstance if the statute has abolished Guardianship in Chivalry, as to every other estate in England, and suffered it to remain in force against this estate of the Prince of Wales, in the Duchy of Cornwall. At the time that this statute of the 12th of Car. II. was enacted, the fee-simple created by the 11th of Edw. III. in the Duchy of Cornwall, was either vested in the King himself, or it was in abeyance. If it was vested in the King himself, is it probable that this estate alone was that to which His Majesty would not extend his bounty? If it was in abeyance, let it be observed, that it is expressly declared by the statute, that the King shall

in future create no tenure but in common socage; is it probable that the legislature, anxiously providing that the King should in future create no tenure but in common socage, could intend, that this estate in the Duchy of Cornwall, whenever it came again *in esse*, should be of the nature of a military tenure, and liable to guardianship in chivalry? If this estate remained liable to guardianship in chivalry, it remained liable also to the *Valor Maretagii*; for the right of marrying the ward was always consequent on guardianship in chivalry. Was the Prince of Wales to be the only man in the kingdom for whose marriage the King was to receive a price? Surely it will be a difficult matter for the Attorney-General to maintain, that the statute of the 12th of Car. II. has abolished guardianship in chivalry, in respect of every other estate in the kingdom, and retained it in respect of this estate in the Duchy of Cornwall, created by the 11th of Edw. III.

But if the Attorney-General rests the King's claim on this ground, he will certainly admit that it is a doubtful point, whether the statute of the 12th of Car. II. does

or does not extend to the Prince's estate, and the *onus probandi* lies on the Attorney-General; for the Prince claims as tenant in fee-simple, the King claims a *particular* estate, a *chattel interest*, as Guardian in Chivalry. Now, wherever any one claims that a *particular* estate shall be carved for his benefit out of a fee-simple, it is incumbent on him to shew his right to this *particular* estate, otherwise every thing is presumed to belong to the tenant of the fee-simple. At all events the King's claim is so doubtful, that it will be indecent in the Attorney-General, and the King's Ministers, to persevere in retaining these revenues, except the King's claim is sanctioned by the opinion of the Judges; this is a step which cannot be avoided; the opinion of the judges must be taken on the question.

If the Prince is entitled to the revenues, during his minority, he will not be reduced to the painful necessity of applying to Parliament for their assistance to enable him to discharge his debts. He will not be exhibited to the world as a prodigal who has contracted debts which he has no means to pay. The nation, before it discharges the
 Prince's

Prince's debts, has a right to know whether the Prince is not entitled to a fund which will of itself be adequate to that purpose. The Prince's creditors likewise have an equitable interest in this fund, and have a right to know whether there exists a fund for their immediate payment, before they accept terms analogous to a composition.

I am aware that His Majesty's Ministers will say, that the King has expended these revenues; and therefore, if it should ultimately be found that the King is indebted to the Prince to the amount of these revenues, yet, as the King has not the money, it must be paid by the nation; and that it is of little consequence whether the Parliament discharges the Prince's debt or the King's debt. But I am not of this opinion.

In the first place, the justice due to the Prince requires, that the public should know whether the Prince is discharging his debts with money received from the bounty of the nation, or whether he is discharging them with his own money. If he discharges his debts with his own money, he may have been guilty of folly in contracting debts; but he has not been guilty of a deviation from
moral

moral rectitude, by contracting debts he was unable to pay. It must make a material difference to the Prince, whether he is to be held out to the world as a *solvent* or as an *insolvent* man.

If money is granted by Parliament, the public ought to know whether that money is granted for the relief of the Prince, or for the relief of the King. If the money is granted for the relief of the King, less sensation will be caused in the public mind than if it is granted for the use of the Prince.

The matter will stand thus: the King has received the revenues of the Duchy during the Prince's minority; he conceived them to be his own; he has expended them; no blame can attach on the King, for he can do no wrong. The blame must fall on the various ministers who, from the birth of the Prince, have suffered the King to continue under the mistake, and have not apprized him that the revenues of the Duchy were the property of his son, and ought to be laid by for his use. The ministers will say, that they were misled by the decision of the judges on Prince Charles's claim. At all events, the blame will fall on various successions of mini-

ministers; and the nation, accustomed to hear that ministers have suffered the public money to be incautiously spent, will grumble, pay the money, and forget the transaction.

But the ascertaining that the money is wanted for the discharge of a debt due from the King, may procure benefit to the people in another way. If it is a debt due from the King, when Parliament is called on to assist the King in discharging it, Parliament may reasonably expect that the King will concur in selling some of the crown-lands for the payment of this debt; or the King may consent to appropriate some part of his Civil List for this purpose. But while the money is demanded for the discharge of a debt due from the Prince, this contribution on the part of the King cannot be asked for by Parliament without being first offered by the King.

But it seems to be the determination of the King's ministers, not only that no part of this debt shall be paid out of the Civil List, or by the sale of crown-lands, but they even seem resolved that no part of it shall be paid by the sale of the Prince's possessions as Duke of Cornwall. The Attorney-General

is

is reported to have said, that the Prince had only a lifehold-interest in the Duchy, and that the interests of the Duke of York and Duke of Clarence would be violated if the possessions of the Duchy were sold. Mr. Pitt did not go quite so far as to say that the Prince had only a lifehold-interest, but gave it as his opinion, that the Prince was only tenant in tail.

My answer to these positions is, that they are all ill-founded. The Prince is not tenant for life; the Prince is not tenant in tail; the Prince is tenant in fee-simple. The Duke of York and Duke of Clarence have no interests; no, not even a possibility of interest in that estate of which the Prince of Wales is now seised.

First, then, in answer to the Attorney-General's assertion that the Prince of Wales has only a lifehold-interest: I desire to know what right the late Princess Dowager (his present Majesty's mother) had to dower out of the possessions of the Duchy of Cornwall if Frederic, Prince of Wales, was only tenant for life? I have heard that she demanded her dower, and that 3000l. a year was paid her out of the possessions of the Duchy in satisfaction

satisfaction of her claim of dower. If I have been misinformed his Majesty's Attorney-General can set me right. But if I am mistaken as to this fact, I cannot be mistaken as to another, viz. that Joan, the widow of Edward the Black Prince, had dower assigned her out of the possessions of the Duchy; for the decision on this claim is in the books. Now, I put it to the Attorney-General, as a lawyer, whether the wife could be entitled to dower if the husband was only tenant for life? So much in answer to the Attorney-General's position, that the Prince of Wales is only tenant for life.

To Mr. Pitt's assertion, that the Prince is only tenant in tail, I answer, that the contrary has been decided. It is laid down in *The Prince's Case*, 8th Report, that the Prince is not tenant in tail, but tenant in fee-simple; and this unanswerable reason is there given for this opinion, viz. that the body is not limited out of which the heirs are to proceed; in other words, any heir of Edward the Black Prince (if the first-born son of a King of England) was entitled to claim this estate from Edward the Black Prince by descent. The Duke of York has no interest,

D

nor

nor even that which the law calls a *possibility*, as distinguished from an *interest*. *A*, tenant for life, or in tail, remainder in fee to *B*. *B* has an *interest* which is alienable, and which the law regards. *A*, tenant in fee, has *B* his only son and heir apparent; *B* has no *interest* but only a *possibility*, which is not alienable, and which the law does not regard. If the Duke of York was capable of being heir to that estate of which the Prince is seised, he would have a *possibility*, but not an *interest*. But if the doctrine laid down in *The Prince's Case*, 8th Report, is law (and I believe it is), the Duke of York has not even a *possibility*. I have examined these positions the more fully, because, if the Prince has no other fund by means of which he can discharge his debts, I am of opinion that his debts should be paid by the sale of his Duchy possessions. And in this view it is material to know what estate the Prince has in the Duchy, and whether the Duke of York has any *interest* which can claim protection? The truth is, the Prince of Wales is tenant in fee-simple, and the Duke of York never can inherit the estate created by the 11th of Ed. III. because he is not *filius primogenitus regis*

regis Angliæ within the description of that settlement.

If it is objected, that Parliament ought not to consent to the Prince's selling the Duchy possessions because, though tenant in fee-simple, he is restrained from alienation; I answer, the King is equally restrained from aliening his crown-lands, yet many instances may be adduced in which Parliament has permitted the King to alien. In our own time the Parliament permitted his present Majesty to alien Somerset-house, and to receive 100,000*l.* for it, in prejudice of what in common language might be called, the expectant interest of the present Prince of Wales. In truth, to every estate in fee-simple the power of alienation is incident, and whenever it is restrained by Parliament, it is restrained, not from regard to the interest of the heir (for he has no *interest*, but a mere *possibility*), but it is restrained from political and public motives; and whenever the public interests require that the restraint should be taken off, it may be taken off without doing any act of injustice to the heir.

If

If the above observations are well-founded, the following conclusions are the necessary result.

1st. That the Prince from the moment of his birth was tenant in fee-simple of the Duchy of Cornwall.

2dly. That he was entitled to the revenues of that Duchy from the same period.

3dly. That they have been received by the King during the Prince's minority for the use of the Prince.

4thly. That this money, with all the increase which ought to have been made by placing out the same at interest, remains a debt from the King to the Prince.

5thly. That the Prince, his creditors, and the nation, have a right to demand that this fund shall be brought forward for the payment of the Prince's debts.

6thly. That in 1787, when a promise the most imprudent and the most humiliating was extorted from the Prince, he was proprietor of a fund adequate to the discharge of all his debts.

Lastly, that at this very moment, while his Majesty's ministers are carrying through Parliament a measure which subjects the Prince

Prince to the reproach of having violated his promise, and which must necessarily disgrace and degrade him in the eyes of his country and posterity, the Prince is entitled to demand, as a debt from his father, a sum of money sufficient to relieve him from all his incumbrances.

SINCE these Observations were printed, I have found that Lord Coke's doctrine respecting the import of the word *Primogenitus* has been over-ruled; and that the second son of the King is *Primogenitus* within the meaning of the act when his eldest brother is dead. The Duke of York, therefore, has a *possibility* of inheriting the Fee-simple created by the 11th of Ed. III.

Since these observations have appeared, the question has assumed another shape. In the debate on Monday last, the Crown lawyers seem to have admitted the following positions: 1st, That the Prince is tenant in Fee-simple. 2dly, That he was tenant in Fee-simple from the moment of his birth.

E

3dly,

3dly, That he was entitled to the profits of the estate from the same period. But they contended, that the estate having been originally granted for the maintenance of the Prince, the King, having maintained him during his minority, was entitled to receive the revenues for the same period.

If this is the point of view in which the question is to be considered, it lies in a narrow compass. How would it stand if the King was a private man, in affluent circumstances, and having a numerous family? If, in this case, a collateral relation was to bequeath to his eldest son an independent fortune, I take it to be clear law, that no part of the income of the fortune so bequeathed would be applicable to the maintenance of the eldest son; the whole would be directed to be accumulated for the benefit of the eldest son; and the father would be told, that the circumstance of his eldest son's having an independent fortune did not discharge him from the duty of maintaining his son. But if the father was in necessitous circumstances, then I admit the Court of Chancery would permit some part of the income of the son's estate to be

be applied towards his maintenance. Why? Because the father being necessitous, and therefore incapable of maintaining and educating his son, in a manner adequate to what the son's future rank required, it is for the interest of the son that his own money should be employed in procuring him a suitable education. Is the question between the King and the Prince to be tried by any analogy to this rule? If it is, it stands thus: viz. Was the King's income adequate to the maintenance of his family? Has not the King's civil list been several times augmented on account of his numerous family? Have not the debts on the civil list been several times discharged for the same reason? Has it not been the general tenor of the language of Parliament, that they meant to furnish his Majesty with an income adequate to the maintenance of himself and his family?

But I suppose I shall be told, that there is no analogy between the present case and that of a private man; that this estate was created by Ed. III. for the support of the *state* and *dignity* of the heir-apparent to the Crown; that a child in the cradle could have no *state*

and *dignity*, and that therefore, during the time that the revenues of the Duchy were not wanted for the support of the Prince's *state* and *dignity*, the use of them resulted to the King. If this is the ground on which the King's claim to the revenues during his son's minority is finally to be rested, let us give it a moment's consideration.

That great and heroic prince, Ed. III. saw that it was not for the interest of the nation that the heir-apparent to the crown should step at once from the nursery to the throne. He saw that it was advantageous that there should be a sort of a middle state, between the dependent condition of the son and the independent situation of the monarch. It was with that view that he created this estate; that he established this fund for the support of the *state* of the heir-apparent. Is it clear that Ed. III. did not intend that the fund should accumulate when there was no *state* to be maintained? The contingent and casual profits of an estate form part of the value of an estate. The Duke of Bedford has a large landed estate; the chance of a minority, and the consequent accumulation
during

during that period, forms part of the value of this estate. Might not Ed. III. view it in this light? Might he not say, I consider the possible accumulation as a benefit; it promotes my views; it increases that fund which I destine for the support of the *state* of the heir-apparent: when the Prince is arrived at that age at which it is proper for him to assume his state, he will not be distressed for money for his outfit; he will have wherewithal to allow even for the waste generally attendant on the first years of a young prince's establishment?

It is possible that great and heroic king might entertain these sentiments; for we see from his own acts that he thought he had not done enough, and therefore added other lands by charter, and (as far as he was able) annexed them to the Duchy in the same manner as the lands which had been annexed by Parliament. Ed. III. when he created this estate, must, from a consideration of the nature of the estate, have foreseen the probability of frequent minorities. What were the sentiments of Henry VI. and his Parliament on this subject, as far as they are to be

be collected from the two acts of the 33d and 38th of his reign?—What were the sentiments of Henry VII. as far as they may be judged of from the expressions in the charter of livery to his son Prince Arthur?

I do not press these points, lest intentions foreign from the truth should be attributed to me. The sentiment I urged in the *Observations* I still retain, viz. that *his Majesty's ministers cannot retain this money, except they can obtain the opinion of the judges as a sanction for their conduct.*

Consider for a moment how the matter stands: the King's minister brings a message to Parliament, suggesting two facts; 1st, That the Prince has contracted debts: 2d, That the Prince has no means by which he can discharge those debts; and praying the assistance of Parliament to enable the Prince to discharge them. Before the Parliament complies with this request, undoubtedly it ought to enquire whether the facts asserted as the ground of the request are true. The 1st, viz. That the Prince has contracted debts, is true: the 2d, viz. That he has no means to discharge those debts, cannot be known

known to be true while such a claim of the Prince's remains unexamined. The minister, from the manner in which he has framed the message, has himself admitted, that the request ought not to be complied with except Parliament believes that both the facts are truly asserted.



known to be true while the claim of the
Prince's representative is not. The main
point of the argument is whether the
message has been actually received, and
whether it ought not to be considered as such.
Parliament believes that both the facts and
the law are in its favor.

